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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Donoco Industries, Inc., a California corporation dba Encore Plastics; Plaintiff, vs. Impact International, Inc., a Nevada corporation, and DOES 1 - 10, Defendants.	Case No.: **Complaint for:** 1. **Trade Dress Infringement under Lanham Act §43(a);** 2. **Interference With Prospective Economic Advantage** 3. **Unfair Competition under CA Bus. & Prof. Code §17200**

Come now Donoco Industries, Inc. dba Encore Plastics ("Encore" or Plaintiff) and states its COMPLAINT as follows:

Parties

1. Plaintiff is a California corporation having principal place of business in Orange County, CA.
2. On information and belief, Defendant Impact International, Inc. ("Impact", or "Defendant") is a Nevada corporation having principal place of business at 2600 Lockheed Way, Carson City, NV 89706.
3. The true names and capacities of other unidentified defendants, currently sued as DOE defendants, are presently unknown to Plaintiff. Plaintiff will later seek leave of this Court to amend this Complaint accordingly, after reasonable discovery is conducted.

Jurisdiction and Venue

4. The action arises under section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), as amended, and common laws of State of California. This Court has subject matter jurisdiction under 28 U.S.C. §§1331, 1338.
5. The Court has supplemental jurisdiction over the state claims.
6. Venue for this action is proper under 28 U.S.C. 1391(b) and (c), because a substantial part of the events giving rise to the claims for relief occurred in this district; the Defendant is subject to personal jurisdiction in this judicial District at the relevant time.

General Allegations

7. Plaintiff is engaged in the design, manufacturing and sales of high quality plastic drinkware and stemware to the food service and hospitality industries. Plaintiff's products are sold generally throughout North America.
8. Starting in or around 1993, Plaintiff manufactured and offered for sale a certain "Elite" line of plastic drinkware. The Elite line of drinkware came in eight different sizes: 10-ounce highball, 14-ounce beverage, 16-ouunce

beverage, 22-ounce cooler, 5.5-ounce rocks, 7-ounce rocks, 9-ounce rocks, and 12-ounce double rocks. The design of the Elite product is based upon a non-functional and distinctive shape developed by Plaintiff that is unique in the plastic drinkware market.

9. Starting in or around 2001, Plaintiff added a "Sausalito" line of tumbler product that used lighter plastic material. The Sausalito tumbler's design is non-functional and distinctive, and forms Plaintiff's unique trade dress ("Trade Dress") for such product.

10. Plaintiff's Sausalito line of products, with its exclusive Trade Dress design, built up and enjoyed sufficient goodwill in the market place. Such unique Trade Dress is an asset of incalculable value for Plaintiff's business success.

11. On information and belief, Defendant also engaged in the business of selling drinkware and tumblers and competing against Plaintiff generally in the same market segments.

12. In or around 2016, Plaintiff noticed that Defendant was selling a line of tumblers that is a copycat version of Plaintiff exclusive Sausalito Trade Dress design. Plaintiff believed that Defendant, directly or indirectly, made unauthorized copy of Plaintiff's Trade Dress to make identical tumbler products.

13. Attached as Exhibit A to this Complaint shows Plaintiff's Sausalito Trade Dress (on the left side) and Defendant's copycat version of its tumblers (on the right side). The "Pepsi" wording is a trademark belonging to Pepsi Co. and forms no part of the Trade Dress claim.

14. Because Defendant's tumblers are identical, or highly similar at least, the appearance, shape and design of the products bear strong resemblance to Plaintiff's Trade Dress, creating a likelihood of consumer confusion among the relevant market segments.

15. Defendant's unauthorized copying of the tumbler products and selling them in the market place constituted infringement of Plaintiff's protected Trade Dress and goodwill. Defendant's infringement caused injury to Plaintiff's business reputation and economic interests.
16. Defendant and Plaintiff compete in same market segments, among others. Defendant has general knowledge of who Plaintiff's customers are, who had past and ongoing business relationship with Plaintiff.
17. Defendant intentionally approached some of Plaintiff's customers to sell the copycat tumbler products, seeking to take the business away from Plaintiff. Some customers indeed switched to Defendant to purchase the copycat tumbler products.
18. On information and belief, the wrongful act of Defendant's infringement of the Trade Dress in fact caused the loss of Plaintiff's business goodwill and profit in an amount to be proven at trial.

Count One: Trade Dress Infringement

19. Plaintiff incorporated all prior allegations, as if fully set forth herein.
20. Plaintiff's design, promotion and sales of its product lines, using the Sausalito line's non-functional and distinctive shape and configuration, established Plaintiff's exclusive Trade Dress right, and entitled Plaintiff to prevent others from using or copying the identical or similar Trade Dress design.
21. Defendant's copying of the Sausalito tumblers that look identical, or highly similar at least, is likely to cause confusion among the relevant market segments, leading the consumers to form a false designation of origin.
22. Plaintiff is informed that Defendant had knowledge of Plaintiff's creation, adoption and prior use of the Trade Dress and willfully/maliciously made copycat version of Plaintiff's Sausalito tumblers, causing injuries to Plaintiff.

23. Defendant's acts as complained herein constitute a violation of Section 43(a) of the Lanham Act and will continue to harm Plaintiff, causing irreparable injury to Plaintiff if not restrained by the Court from further violation.
24. Defendant's acts as complained herein further caused damages in an amount to be proven at trial.

Count Two: Interference with Prospective Economic Advantage

25. Plaintiff incorporated all prior allegations, as if fully set forth herein.
26. Plaintiff has an existing business relationship with its customers and such relationship did, and will continue to, bring prospective business advantage to Plaintiff.
27. Defendant's infringing acts as complained herein are wrongful and have caused injuries to Plaintiff in that Defendant knowingly and intentionally interfered with such business advantage by actively selling and/or distributing copycat products.
28. Plaintiff suffered damages as a result of such interference with monetary loss to be proven at trial.
29. Plaintiff will continue to suffer additional harms and damages if the Court does not restrain Defendants from further wrongful acts complained herein.

Count Three: Unfair Competition

30. Plaintiff incorporated all prior allegations as if fully set forth herein.
31. Defendant's acts as complained herein are unfair business practices in that consumers are misled into thinking that Defendant's business activities are authorized by Plaintiff, and misled into thinking that Defendant's copycat tumbler products are from the source approved or authorized by Plaintiff.
32. Defendant's acts of infringement as complained herein unlawfully infringed upon Plaintiff's exclusive Trade Dress right.

33. Defendant's wrongfully received monies, profits, and/or properties that rightfully belong to Plaintiff, and Plaintiff is entitled to restitution or restoration thereof in an amount to be proven at trial.

34. Defendant will continue to cause harms to Plaintiff for the acts complained herein, unless the Court issues an order restraining the acts complained herein.

Prayer for Relief

WHEREFOR, Plaintiff respectfully requests that the Court find for Plaintiff's favor and against Defendant, for the following relief:

a. Judgment that Defendant is liable for infringement of Plaintiff's Trade Dress by violating the provision of Section 43(a) of the Lanham Act.
b. Judgment that Defendant is liable for unfair competition by violating the provisions of Sections 17000/17200 of California Business and Professional Code.
c. An Order that Defendant to pay over to Plaintiff all damages that Plaintiff sustained as a consequence of the acts complained herein.
d. An Order the Defendant to pay over to Plaintiff treble damages pursuant to California Business & Professional Code§ 17082.
e. An Order that Defendant is enjoined from engaging in any further manufacturing, selling or otherwise distributing the copycat tumbler products.
f. An Order the Plaintiff is to recover its attorney's fees and expenses in this action.
g. Such other and further relief as the Court may deem just and proper.

Dated: April 19, 2017

Respectfully Submitted,

/s/ Jen-Feng Lee

Jen-Feng (Jeff) Lee
Attorney for Plaintiff
Donoco Industries, Inc.

Demand For Trial by Jury

Plaintiff, pursuant to Rule 38 of the Federal Rules of Civil Procedure, hereby demands a trial by jury.

Dated: April 19, 2017

Respectfully Submitted,

/s/ Jen-Feng Lee

Jen-Feng (Jeff) Lee

Attorney for Plaintiff
Donoco Industries, Inc.